

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking for purposes of revising General  
Order 96-A regarding informal filings at the  
Commission.

Rulemaking 98-07-038  
(Filed July 23, 1998)

**OPINION REVISING PROPOSED GENERAL ORDER 96-B  
AND ADOPTING THAT GENERAL ORDER AS REVISED**

**(See Appendix E for Appearances.)**

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**OPINION REVISING PROPOSED GENERAL ORDER 96-B  
AND ADOPTING THAT GENERAL ORDER AS REVISED**

**1. Introduction**

Today, we adopt General Order (GO) 96-B.<sup>1</sup> This GO, like its predecessors, comprehensively governs utility tariffs (including their form, content, and publication), and an informal procedure, termed an “advice letter,” that is the general means by which utilities request Commission approval for proposed tariff revisions. The use of advice letters has somewhat expanded in recent years, pursuant to statute or Commission order, to cover a limited range of nontariff matters. This GO governs all advice letter practice.

The new GO replaces GO 96-A for all advice letters submitted after July 1, 2001. Pending advice letters, and those filed after today but before July 1, 2001, will continue to be handled under the provisions of GO 96-A. We provide this transition period to minimize confusion, allow pending advice letters to be reviewed under procedures in effect when they were submitted, and enable everyone concerned with advice letters to become familiar with the new procedures before they take effect.

Following adoption of GO 96-B, staff from the Legal, Administrative Law Judge, and Industry Divisions will coordinate to conduct training programs for

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<sup>1</sup> GO 96-B is appended to today’s decision. As we proposed in our order instituting this rulemaking, GO 96-B will consist of “General Rules” (Appendix A) governing all advice letters and other informal matters, and “Industry Rules” containing procedures specific to different utility industries: Energy (Appendix B); Telecommunications (Appendix C); and Water (Appendix D). The revisions to the General Rules, as compared to the version we originally proposed, are indicated by strikeout and underlining. The Industry Rules have been rewritten to such an extent that strikeout and underlining would not be meaningful.

all staff and interested persons. During these programs, we encourage open discussion of how GO 96-B and the transition period will work.

Although a transition period is needed, we recognize the difficulty for everyone of having advice letters simultaneously pending under different systems of review. Accordingly, we urge the utilities and the Industry Divisions to take all reasonable steps to minimize the number of advice letters pending as of July 1, 2001. In addition, we make the following prospective disposition of certain of such pending advice letters: Any unprotested advice letter that was filed on or before May 21, 2001, and is still pending as of July 1, 2001, shall be automatically approved as of that date, unless, on or before that date, the reviewing Industry Division has (1) placed on the Commission's agenda a draft resolution disposing of the advice letter, or (2) made a data request to the utility or otherwise notified the utility, in writing, that the advice letter is undergoing active review. This special approval process during the transition period will enable us to dispose of those pending advice letters that are uncontroversial, and to deal in due course with advice letters under active review as of July 1, 2001.

In the sections below, we first describe some of the major events since the start of this rulemaking, in which we have already received several rounds of comments. (Section 2.) We then elaborate on our reasons for creating a tiered structure for advice letter review, with special attention to Tier 1 (advice letters that are effective pending disposition). (Sections 3-3.3.) Next, we describe our overall timeline for advice letter review and disposition, highlighting the elements that are common to all the tiers as well as their distinguishing features. (Sections 4-4.7.) We then summarize the major changes to the General Rules in GO 96-B, as compared to the version of the General Rules set forth in the order instituting this rulemaking. (Sections 5-5.10.) Finally, we summarize the major

changes to the respective Industry Rules from our initial proposals.  
(Sections 6-8.)

## **2. Events Since the Start of This Rulemaking**

We had hoped to complete this rulemaking by now. Several factors have lengthened the process. We discuss some of the main factors below.

Senate Bill (SB) 779 (Calderon), effective January 1, 1999, requires us, in relevant part, to serve draft resolutions on “parties,” and to provide in many instances a public review and comment period before we vote on the draft resolutions. The disposition of many advice letters is by resolution, so we began our process for implementation of SB 779 by soliciting comments in this rulemaking. These comments, in turn, prompted a new rulemaking (R.99-02-001), which now is concluded. The new SB 779 rules will complement the advice letter procedures under consideration in this rulemaking.<sup>2</sup>

Another development is the vast increase in utilization of the Internet. What seemed to be visionary proposals in the original rulemaking, e.g., for Internet access to utility tariffs, now seem unduly cautious. We have revised these proposals. Among other things, we give large utilities (those whose gross intrastate revenues exceed \$10 million) a deadline of October 1, 2001, for publishing their tariffs on the Internet.

The most important factor delaying issuance of our revised proposals, however, is our realization of how ambitious and far-reaching this project is, and the consequent need to think through, as thoroughly as we can, and from various

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<sup>2</sup> In Decision (D.) 00-01-053, issued January 21, 2000, we adopted the new and amended rules, and closed R.99-02-001. These rules are part of the Commission’s Rules of Practice and Procedure, codified in Title 20 of the California Code of Regulations. New Rule 77.7 contains most of the provisions specific to resolutions.

points of view, all the aspects of implementation. Although most of the parties have supported the concepts embodied in GO 96-B, our review of the comments shows that additional discussion of these concepts is necessary. In particular, we need to elaborate on the reasoning behind the new tier structure for advice letter review, and how we expect the tier structure to work in practice. This elaboration is contained in Sections 3-4.7.

The months spent hammering out these implementation issues internally will prove fruitful in the long run in fostering a better understanding, inside and outside the Commission, of our rules governing tariffs and advice letters. There are currently many more advice letter filings than there are formal proceedings, so care in developing and implementing GO 96-B is fully warranted.<sup>3</sup>

### **3. Tiers of Review**

Historic advice letter practice, as set forth in GO 96-A, has become inadequate in relation to the volume and variety of advice letters submitted for Commission review in recent years. For example, GO 96-A does not systematically distinguish advice letters from formal proceedings, or sort advice letters by type, or explain how, when, or by whom an advice letter would be approved or rejected. The proposed tier structure for advice letter review should improve this situation dramatically.

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<sup>3</sup> The Commission generally has pending about 500 formal proceedings and about 1,500 advice letters, but an advice letter typically takes far less time to process than a formal proceeding, so advice letter filings outnumber formal filings by much more than 3 to 1. In 1999, 3,824 advice letters were filed, as follows: Telecommunications Division, 3,156; Energy Division, 496; and Water Division, 172. In 2000, 3,965 advice letters were filed: Telecommunications Division, 3,228; Energy Division, 522; and Water Division, 215.

For all advice letters in the energy, telecommunications, and water industries, we propose to distinguish fundamentally between those advice letters that the reviewing Industry Division may approve or reject (and that may be deemed approved under certain conditions), and those advice letters whose disposition will require a Commission resolution. In short, we separate advice letters into two broad groups: advice letters disposed of by staff, where approval or rejection is ministerial; and advice letters disposed of by Commission resolution, where approval or rejection requires the exercise of discretion.

For water, the mode of disposition is the only generic distinction we make among advice letters. For energy and telecommunications, advice letters submitted for staff disposition are further divided between those that are “effective pending disposition,” i.e., they may be implemented before approval (“Tier 1”), and those that are effective, and may only be implemented, on or after approval (“Tier 2”). Advice letters requiring a Commission resolution go to “Tier 3” under the Energy and Telecommunications Industry Rules.

As mentioned above, an advice letter may be deemed approved in limited circumstances. Only an advice letter that the utility has properly submitted for staff disposition (for water, the “Ministerial Tier;” for energy and telecommunications, Tier 1 or Tier 2) may be deemed approved. If such an advice letter is not timely protested, it will be deemed approved at the end of the “initial review period,” unless by that date the reviewing staff either rejects the advice letter or states in writing that review of the advice letter is ongoing.<sup>4</sup>

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<sup>4</sup> We detail the timelines and review processes in our tier-by-tier discussion later. See Sections 4-4.7.



The tier under which a utility submits an advice letter does not irrevocably dictate the mode of disposition of that advice letter. For example, an issue may arise in the review of a Tier 1 or Tier 2 advice letter that requires the exercise of judgment about the meaning of a statute, so instead of the delegation to staff normal for the tier, disposition of that advice letter would be by Commission resolution. (This change in mode of disposition generally will delay the disposition (due to the statutory public review and comment requirements that apply to Commission resolutions), but the utility will not have to re-submit its advice letter, nor will there be a new or extended protest period.) On the other hand, a Tier 3 advice letter may be clearly erroneous, e.g., it may contain errors of arithmetic or clear inconsistencies with the statute or Commission order that purportedly authorizes the advice letter. In those situations, Industry Division staff will reject the advice letter without going through the fuss and delay of putting a draft resolution before the Commission. Whenever disposition of an advice letter would be a ministerial act, staff has delegated authority under GO 96-B to make that disposition.

If a utility designates the wrong tier for an advice letter, the appropriate action is for the staff of the reviewing Industry Division to reject the advice letter without prejudice whenever the designated tier is lower than the proper tier.<sup>5</sup> In other words, if the utility has designated for disposition by staff an advice letter that, under the applicable Industry Rules, belongs in the tier for advice letters to be resolved by the Commission, staff will reject the advice letter on that basis.

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<sup>5</sup> Staff will also reject an advice letter without prejudice if the subject matter of the advice letter requires a formal proceeding (typically, an application or petition for modification).

The reason for rejection in this situation is that the utility improperly designating a lower tier could thereby gain improper advantages.

For example, where an advice letter is improperly submitted for filing under Tier 1, the utility generally will have implemented the action proposed in the advice letter without prior regulatory approval. If the action in fact was of a kind that requires prior regulatory approval, implementation without such approval may harm consumers, competitors, or both. Similarly, if a utility designates Tier 2 for an advice letter that should be designated Tier 3, the utility is saying that the advice letter could be deemed approved at the end of the initial review period, whereas Tier 3 advice letters, in fact, can only be approved and become effective pursuant to Commission resolution.

There is one situation where the designation of a wrong tier does not result in rejection without prejudice. Specifically, if a utility designates Tier 3 for an advice letter that should be reviewed under a lower tier, the reviewing Industry Division will approve or reject the advice letter under Tier 2. In other words, the utility cannot compel a Commission resolution on an advice letter that is subject to Industry Division disposition under this GO. However, by the utility's wrongly designating Tier 3 for an advice letter, that advice letter cannot be deemed approved.<sup>6</sup>

Along with tiers of review, GO 96-B introduces two major concepts already mentioned, namely, "effective pending disposition" (Tier 1 advice letters) and "deemed approved" (Tier 1 and Tier 2 advice letters). The following

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<sup>6</sup> We note that there is also one situation in which the utility may properly designate a higher tier. Specifically, the utility submitting an advice letter that would qualify for Tier 1 may instead designate Tier 2 for that advice letter. We discuss this situation Section 3.2. See text accompanying footnotes 7 and 8.

sections of today's decision contain a detailed explanation of these concepts in practice.

### **3.1 Concepts Underlying Tier 1**

Advice letters are an informal procedure used by the Commission to deal with types of utility requests that are usually minor, noncontroversial, or otherwise appropriate for processing without hearings or a formal evidentiary record. Most often an advice letter is submitted to effect a tariff change to comply with a prior Commission order, or to document the specific implementation of a utility program for which the utility already has general authorization by statute or Commission order. No protest is ever filed in the large majority of advice letters. Also, in many instances, approval or rejection of an advice letter is ministerial, i.e., reviewing staff can determine the advice letter's validity through objective review of the supporting materials and authority cited by the utility. The Commission may lawfully delegate such determinations to its staff.

In proposing the concept of advice letters "effective pending disposition" (i.e., implemented at some time before their approval), we had in mind certain of those advice letters whose review and disposition can be delegated to our staff. The Energy and Telecommunications Industry Rules specify those subject matters that, under the current regulatory structure in those industries, seem appropriate for handling by means of advice letters that are effective pending disposition. We expect that our creating this new "tier" for the review and disposition of such advice letters will both help the Commission and the stakeholders to focus their resources on more controversial matters and ensure that less controversial matters do not fall through the cracks. With thousands of advice letters submitted to the Commission each year, improving the efficiency of our review process has great benefits for everyone.

The main reason to allow many advice letters to go into effect pending disposition, however, is to better accommodate innovation and competition in the marketplace. According to some commenters, a utility that must publicly announce and then await regulatory approval for a new product or service will often find that competitors are able to copy the program before the utility has had any significant chance to benefit from its initiative. As a result, the incentive to innovate is reduced, nominal competitors tend to “me too” each other so that prices move in lockstep, and any genuinely innovative advice letter is correspondingly more likely to elicit protests from competitors who hope to gain time to catch up with similar proposals of their own. By allowing certain types of advice letters to take effect before regulatory approval, we can fulfill our responsibilities while giving greater scope to market forces.

### **3.2 Tier 1 in Operation**

Most commenters share our enthusiasm for the “effective pending disposition” concept, but their comments demonstrate the need to address certain questions about how the concept works in practice. These questions are: Must the utility implement such an advice letter immediately, or can the utility await approval? What is the procedure when, during review of such an advice letter, an issue arises that must be resolved by the Commission? Finally, what is the procedure when the utility mistakenly or deliberately requests the “effective pending disposition” tier for an advice letter that in fact does not qualify for such treatment? We address these questions below, in the order stated.

- **An Advice Letter Whose Subject Matter Qualifies for Tier 1 May Be Submitted Under Tier 2 (“Effective Upon Staff Approval”) if the Utility Chooses.**

A necessary condition to our allowing any advice letter to go into effect before it has received our approval is that the utility must be prepared to

undo any actions the utility has taken to implement the advice letter if the advice letter ultimately is not approved. The kinds of remedies that are appropriate will depend on the particular advice letter.<sup>7</sup> Beyond such remedies as we may require, the utility in this situation will likely suffer loss of credibility and good will – losses that may be very damaging in a competitive marketplace.

We think the severity of these potential losses helps to ensure the integrity of the Tier 1 process.<sup>8</sup> However, some commenters feel that there may be gray areas where the propriety of a Tier 1 designation is not clear. In any case, they suggest that a utility that prefers to obtain prior regulatory approval should not be forced to implement an advice letter in advance of such approval.

There is a simple way to address this concern, namely, allow the utility submitting an advice letter that would qualify for Tier 1 to nevertheless submit the advice letter for processing under Tier 2 (effective upon staff approval). We have made changes to the General, Energy, and Telecommunications Rules to give utilities this choice.

- **Industry Division Staff Will Prepare a Draft Resolution for the Commission's Consideration If an Issue Arises in Advice Letter Review That the Commission Must Address.**

All of the Industry Rules separate advice letters generally between those whose subject matter seems to be within staff's delegated authority to review and resolve, and those whose subject matter seems to require resolution

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<sup>7</sup> We expect customer refunds to be a common remedy but not necessarily the only remedy. We cannot be more definitive at this time except to say that we expect to approach these (hopefully) rare situations on a case-by-case basis.

<sup>8</sup> We further discuss this point below in connection with the third question, regarding advice letters improperly requesting review under Tier 1.

by the Commission itself. There will be instances, however, where the utility submitting an advice letter has properly designated one of the lower (i.e., staff disposition) tiers and yet, because of the nature of an issue raised by a protestant or discovered by staff, the advice letter requires exercise of discretion to approve or reject, and so must go to the Commission.

If staff determines that a Tier 1 advice letter will require disposition by the Commission, staff will so notify the utility and any protestants by the end of the initial review period. The staff notification does not act to suspend the effectiveness of an advice letter already in effect; however, the notification will extend the review period and prevent the advice letter from being deemed approved.<sup>9</sup>

Unfortunately, delay in disposition is almost inevitable if a Tier 1 advice letter requires a Commission resolution, because Industry Division staff will have to write a draft resolution, place it on the Commission agenda, and (in many instances) circulate it for public review and comment pursuant to Pub. Util. Code § 311(g)(1). Nevertheless, proposed GO 96-B will improve significantly on current practice in that the utility and any protestants will have

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<sup>9</sup> Many advice letters that are subject to staff review do not go into effect pending disposition. These are Tier 2 advice letters (energy and telecommunications) and Ministerial Tier advice letters (water). When an issue arises in the review of these advice letters that requires Commission resolution, staff will so notify the utility and any protestants. The notification will (1) prevent the advice letter from being deemed approved, and (2) serve as a “suspension” pursuant to Pub. Util. Code § 455 of any advice letter that would otherwise go into effect unless suspended within 30 days of the advice letter’s filing. (See General Rule 7.5.) Consequently, the initial review period for Tier 2 advice letters is 30 days, and staff notification that the advice letter will go before the Commission for disposition will be given by the last day of the initial review period.

better information on the status of pending advice letters and will know the steps for concluding the review process.

We emphasize that a change in the mode of disposition from a staff notification (the usual mode of disposition for advice letters in Tier 1 or 2) to a Commission resolution (the mode of disposition for advice letters in Tier 3) does not in itself trigger a new protest period. Finally, the foregoing discussion relates to advice letters that were properly designated Tier 1 or 2. We turn now to the problem of an advice letter improperly designated Tier 1.

- **An Advice Letter Improperly Designated Tier 1 Will Be Rejected Without Prejudice and May Require Remedial Action.**

Because a utility can implement a Tier 1 advice letter before receiving regulatory approval, the improper submittal of an advice letter under Tier 1 is consequential. We see two likely scenarios for this mishap. First, there may be a good faith issue over whether a given advice letter meets the requirements for Tier 1. Second, the improper submittal may be knowing and deliberate, e.g., for the sake of competitive advantage.

As we discussed earlier, we expect that few utilities would run the risk of having to undo an action taken to implement an advice letter improperly designated Tier 1. The costs, the damage to the utility's reputation, and the possibility of sanctions (especially in our second scenario) should give pause to any management that contemplates running this risk. Nevertheless, we need to be clear on how staff will respond, should either of these scenarios occur.

Whenever an issue arises over whether an advice letter was properly designated Tier 1, the reviewing Industry Division will analyze the issue, and if staff determines that the Tier 1 designation was improper, staff will reject the advice letter without prejudice, its effectiveness will cease, and the

Commission will further direct the utility regarding any other remedial actions necessary to undo the advice letter. If staff is unable, before the end of the initial review period, to determine the propriety of the Tier 1 designation, staff will so notify the utility and any protestants prior to the date that the advice letter would otherwise be deemed approved.

### **3.3 Advice Letters Deemed Approved**

Historically, and still today, many advice letters are simple and uncontroversial, as when a utility submits revised tariff sheets to implement specific directions in a statute or Commission order. The revised tariff sheets are readily checked for conformity with the authority cited, and the large majority of such advice letters do not elicit any objection from the reviewing Industry Division or third parties. The “deemed approved” concept is carefully tailored to this situation.

The concept, in brief, is that an advice letter will be deemed approved at the end of the initial review period<sup>10</sup> if the advice letter satisfies all of the following conditions. First, the advice letter is one whose subject is suitable for Industry Division disposition, pursuant to the applicable Industry Rules. Second, the advice letter is unprotested, i.e., no protest has been submitted within the 20 days following the date of filing. Third, there has been no disposition, and the Industry Division has not extended the review period or suspended the advice letter. The General and Industry Rules govern the types of advice letters that may be deemed approved. In particular, the “Ministerial Tier”

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<sup>10</sup> As we will discuss later, the “initial review period” is 60 days from the date of filing for advice letters effective pending disposition, and 30 days from the date of filing for all other advice letters.



under the Water Industry Rules, and Tiers 1 and 2 under the Energy and Telecommunications Industry Rules, list the types of advice letters that may be deemed approved.

When an advice letter is deemed approved, no written disposition is necessary; however, the approval will be reported in the Commission's Daily Calendar. Conversely, there will be a written disposition (approval or rejection) for all advice letters except those deemed approved.

#### **4. Timeline for Advice Letter Review and Disposition**

In this section, we summarize the major events in handling advice letters under GO 96-B. We highlight the time between the major events, and indicate things that can speed or slow the process.

##### **4.1 Filing, Protest, Reply**

The process begins with a utility submitting an advice letter to the appropriate Industry Division. Normally, the Industry Division will accept the advice letter for filing soon after the day it is submitted. The date of filing is the day when the Industry Division reports the advice letter and the utility-designated tier in the Commission's Daily Calendar. The Industry Division may delay the filing if, for example, the advice letter is incomplete.<sup>11</sup> In that case, the utility will have an opportunity to supply the missing material to the Industry Division and to everyone on whom the advice letter was served. See General Rule 5.6.<sup>12</sup>

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<sup>11</sup> The General and Industry Rules have content requirements for the various types of advice letters. In addition, all advice letters must have a cover sheet with "scoping" information. See General Rule 5.5.

<sup>12</sup> If the utility does not correct the defect within a reasonable time, the Industry Division will return the advice letter with a statement of the defect. Returning the

*Footnote continued on next page*

Assuming the advice letter filing is not delayed as discussed above, then the Daily Calendar report should happen quickly. The 20-day protest period runs from the date of filing, i.e., the day when the advice letter is reported in the Daily Calendar. The utility must reply to any protest; the reply is due five business days after the end of the protest period.

The filing, protest, and reply process is common to all advice letters. The timeline thereafter depends on the tier of the particular advice letter, and on the kinds of issues (if any) that emerge as the result of protest or the reviewing Industry Division's own analysis. Review time beyond the initial review period for a given advice letter may be taken so that the Industry Division may complete its analysis, and draft a resolution if one is necessary to the disposition of the advice letter.

Since the review timeline may vary by tier once the filing, protest, and reply steps are completed, our summary will address each tier separately. First, however, we discuss some statutory provisions related to the review process for advice letters.

#### **4.2 Review and Suspension Under Public Utilities Code Section 455**

The Public Utilities Code has many requirements for Commission procedures but relatively few requirements specific to advice letters.<sup>13</sup> In

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advice letter in these circumstances does not constitute a disposition; since the utility never submitted a proper advice letter, the advice letter will not have been filed.

<sup>13</sup> One statute that expressly refers to advice letters is Pub. Util. Code § 455.1, authorizing the use of that procedure by water utilities on matters related to “service of recycled water.” Also, Pub. Util. Code § 455.3 appears to contemplate the use of advice letters by oil pipelines in seeking rate changes. Both of these statutes contain their own timelines and provisions for the proposed rates to become effective on an interim basis subject to refund. When dealing with an advice letter whose subject comes within one

*Footnote continued on next page*

devising our timelines for advice letter review, we have relied chiefly on Pub. Util. Code § 455. That statute only governs tariff changes “not increasing or resulting in an increase in any rate.”<sup>14</sup> Section 455 authorizes the Commission to investigate and, if need be, to suspend proposed tariff changes. In relevant part, § 455 says that:

- Such a tariff change that is not suspended by the Commission shall become effective 30 days after filing “or a lesser time[,] subject to the power of the [C]ommission...to alter or modify” the tariff change;
- The Commission may “enter upon a hearing” on the proposed tariff change;
- The tariff change will not go into effect (i.e., the change is “suspended”) pending the “hearing” and Commission decision; and
- The Commission may continue the suspension for 120 days “beyond the time when [the tariff change] would otherwise go into effect” and may extend this period of suspension “for a further period not exceeding six months.”

In GO 96-B we propose to use the above timelines (with minor adjustments depending on the tier) for reviewing essentially all advice letters, including those advice letters that increase or result in an increase in rates. The only exceptions are those few advice letters for which a different process or timeline is specified by statute or by other Commission order.

While § 455 allows up to 330 days (including initial review and periods of suspension) for disposition of an advice letter, we are confident that

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of these statutes, the applicable Industry Rules follow the specific statutory timeline and not the general review timeline described in the text accompanying this footnote.

<sup>14</sup> Rate changes generally are governed by Pub. Util. Code § 454, but that statute, in contrast to § 455, does not contain a timeline for review of proposed changes.

review of most advice letters under GO 96-B will consume much less time. To speed review and disposition, we (1) expressly delegate authority to the Industry Divisions to handle the review and disposition of many kinds of advice letters, and (2) allow certain noncontroversial advice letters to be deemed approved within a stated period (30 or 60 days, depending on the tier). These two changes to current practice should significantly improve the timeliness of our advice letter dispositions.

Another improvement in GO 96-B over current practice is that, while we expressly authorize the reviewing Industry Division to suspend a proposed tariff change while investigating the change, we also limit the length of time for which the tariff change may be suspended. Regrettably, we will need to use this suspension authority often for advice letters that require disposition by Commission resolution. Resolutions generally must be circulated for public review and comment pursuant to Pub. Util. Code § 311(g)(1). Drafting, placing on the Commission's agenda, and voting on a resolution within the 30-day initial review period contemplated by § 455 is generally not possible. With rare exceptions, the disposition of Tier 3 advice letters, and of any other type of advice letter for which a Commission resolution is usually required, will consume more than 30 days despite everyone's best efforts.<sup>15</sup>

#### **4.3 Review of Tier 1 Advice Letters**

The initial review period for a Tier 1 advice letter (i.e., an advice letter effective pending disposition) is 60 days; filing, protest, and reply all occur

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<sup>15</sup> An exception would be those instances where the reviewing Industry Division can make the disposition on a ministerial basis. For example, if a Tier 3 advice letter depends on a calculation that proves to be mistaken, rejection of the advice letter would be ministerial, and there is no need for a Commission resolution.

during this period, as described above. After 60 days have elapsed from the date of filing, the advice letter is deemed approved unless there is a timely protest or the reviewing Industry Division notifies the utility and protestants (if any) that the initial review period is being extended.

The Industry Division may extend the period for various reasons. For example, staff may need to get additional information regarding the advice letter, typically by means of an information request to the utility (see General Rule 7.5.2). Staff may also need more time to complete its analysis of the advice letter, or to draft a resolution if staff finds that Commission disposition of the advice letter is necessary. In addition, where there has been a timely protest and there has not been a disposition of the advice letter within the initial review period, the review period will be automatically extended. In that situation, the Industry Division will notify the utility and protestants of the length of the extension.

On or before the 60th day, the Industry Division will notify the utility and any protestants if disposition of the advice letter will not occur within the 60-day initial review period. The notification will state the reason for the extension. This first extension of the review period is for up to 90 days. There may be a further extension of up to six months (180 days); thus, disposition of a Tier 1 advice letter should not consume more than 330 days (= 60 days for initial review + up to 90 days for 1<sup>st</sup> extension + up to 180 days for final extension).

In short, while the overall timeline for Tier 1 advice letters is consistent with § 455, we have structured the first 150 days differently: The initial review period under GO 96-B is 60 days, not 30 days. However, the 30-day initial review period under § 455 does not concern the date by which an advice letter must be approved or rejected. Instead, the statute sets the date by which proposed tariff changes must either be suspended or allowed to take

effect, “subject to the power of the [C]ommission...to alter or modify them.” Since we are allowing Tier 1 advice letters to become effective pending disposition, we are not constrained by § 455 to complete our review within 30 days. Note also that an extension of the Tier 1 review period means only that disposition of the advice letter will take a little longer; the extension does not cancel the effectiveness of the advice letter.

Our reason in choosing a 60-day initial review period for Tier 1 is to ensure that our procedural innovation (i.e., allowing certain advice letters to become effective pending disposition) works as we intend. Although we expect the new procedure will benefit consumers and stimulate competition, these results will depend, in part, on our finding and promptly correcting any misuse of the procedure. A 60-day rather than a 30-day initial review period is therefore necessary to allow adequate scrutiny before the advice letter may be deemed approved.

#### **4.4 Review of Tier 2 Advice Letters**

Like Tier 1, Tier 2 advice letters concern matters generally not expected to require a Commission resolution; however, unlike Tier 1, the tariff or other changes proposed in a Tier 2 advice letter do not become effective until the advice letter is approved. As discussed earlier, a utility that prefers prior approval to immediate effectiveness may submit under Tier 2 an advice letter that otherwise would qualify for Tier 1.

The initial review period for a Tier 2 advice letter is only 30 days. The initial and further review periods follow the § 455 timeline exactly. Thus, a Tier 2 advice letter is deemed approved if, after the 30-day initial review period has elapsed, there is no timely protest and the reviewing Industry Division has not

notified the utility that the advice letter is being suspended.<sup>16</sup> However, the Industry Division will suspend the advice letter to continue its review beyond the initial review period. Our General Rules deliberately use “suspension” rather than “extension” to describe review of a Tier 2 advice letter beyond the initial review period. In contrast to a Tier 1 advice letter, which continues in effect during subsequent review periods, a Tier 2 advice letter is not in effect during the initial review period, and its effectiveness will be suspended throughout any subsequent review period. The suspension is consistent with § 455 and with the fundamental premise of Tier 2 (and Tier 3) advice letters that approval of these advice letters must occur before any proposed change becomes effective.

#### **4.5 Review of Tier 3 Advice Letters**

Tier 3 advice letters concern matters whose disposition is expected to require action by the Commission.<sup>17</sup> As with Tier 2 advice letters, the initial review period is 30 days, but unlike Tier 2, a Tier 3 advice letter may not be deemed approved. Due to the kinds of subjects dealt with in Tier 3 advice letters, proper regulatory oversight requires us to ensure affirmatively the propriety of a Tier 3 advice letter before allowing the proposed changes to take

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<sup>16</sup> The grounds for suspension for Tier 2 advice letters are the same as for extension of the review period for Tier 1 advice letters: getting additional information, completing staff’s analysis, dealing with a protest, or drafting a resolution where Commission disposition of the advice letter proves to be necessary. The first suspension of a Tier 2 advice letter is for up to 120 days, and there may be a further suspension for up to 180 more days. This overall timeline results in up to 330 days for disposition of a Tier 2 advice letter, the same as for Tier 1.

<sup>17</sup> Industry Division disposition of a Tier 3 advice letter is possible, however, where the advice letter contains the kind of defect where rejection of the advice letter would be ministerial.

effect, regardless of whether there has been a protest to the advice letter. Since GO 96-B provides that a tariff change proposed in a Tier 3 advice letter may not become effective unless and until the Commission itself approves the advice letter, the suspension of such advice letters under GO 96-B is automatic if (as generally will be the case) disposition does not occur by the end of the initial review period.

Because Commission resolutions, like other Commission decisions, are subject to public review and comment under by Pub. Util. Code § 311(g)(1), only in extraordinary circumstances will we be able to dispose of a Tier 3 advice letter by the end of the initial review period.<sup>18</sup> For virtually all Tier 3 advice letters, the reviewing Industry Division will send a suspension letter to the utility and any protestants by the end of that period. The letter will indicate that staff is drafting a resolution for the Commission's consideration, and will remind the utility that the proposed changes do not become effective during the suspension. The suspension letter will also note whether staff is seeking additional information or is otherwise still completing its analysis of the advice letter.

The suspensions for Tier 3 mirror those for Tier 2. Thus, the first suspension is for up to 120 days, and there may be a further suspension of up to

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<sup>18</sup> Pub. Util. Code § 311(g)(2) provides for reduction or waiver of the period for public review and comment in some situations, and § 311(g)(3) allows the Commission to establish, by rule, additional categories of decision subject to such reduction or waiver. We have adopted rules to implement this authority. See footnote 2 and accompanying text. We expect these rules, together with statutory provisions for reduction or waiver, will enable us, for many Tier 3 advice letters, to minimize delay beyond the initial 30-day review period, but neither the statute nor the rules are likely to eliminate the need for suspension letters except in the case of unforeseen emergencies.



180 more days. Overall, disposition of a Tier 3 advice letter should not require more than 330 days.

#### **4.6 Other Advice Letter Tiers**

At an early stage of developing GO 96-B, staff and workshop participants cut down the advice letter tiers to the three we just described. We agree with this recommendation. The tiers we have now depend on fundamental concerns, such as the scope of the authority that we may delegate to staff. Additional tiers are likely to result in complexity and confusion, rather than clarity and ease of administration.

The Water Industry Rules, in fact, present an even simpler tier structure because those rules do not provide for an advice letter to become effective pending disposition. The “Ministerial Tier” under the latter rules corresponds to “Tier 2” for energy and telecommunications. The timeline for handling these water advice letters will be the same as we described for Tier 2, while advice letters in the “Discretionary Tier” under the Water Industry Rules will follow the timeline we described for Tier 3.

Finally, we note that the Legislature has enacted special procedures for certain advice letters. (See Pub. Util. Code §§ 455.1 (recycled water), 455.3 (rate changes for oil pipelines).) We have assigned these types of advice letter to the tier best approximating the statutory procedures, but we also propose Industry Rules specific to these types of advice letters where necessary to implement the respective statutes.

#### **4.7 Disposition of Advice Letters**

Unprotested advice letters in Tiers 1 or 2 may be deemed approved without a written disposition. In all other instances, there will be a written disposition. As discussed earlier, written disposition of Tier 1 and 2 advice

letters typically will be by letter from the reviewing Industry Division, while disposition of Tier 3 advice letters typically will be by Commission resolution.

Whatever the mode of disposition, and regardless of whether the disposition is an approval or a rejection, all dispositions will be reported in tabular form at the Commission's Internet site. The table of dispositions will be updated regularly, so that anyone can readily determine whether and when a particular advice letter was approved or rejected. Also, consistent with current practice, the reviewing Industry Division, upon approval of an advice letter, will return to the utility the relevant tariff sheets stamped with the effective date.

On the following two pages, we provide tables summarizing the key provisions of GO 96-B regarding the disposition (Table 1) and effective date (Table 2) of advice letters. These tables distill many provisions of GO 96-B, most notably General Rules 7.6.1 and 7.6.2 (disposition) and General Rules 7.3 to 7.3.5 (effective date), and the tiers of review under the respective Industry Rules. While we have made great efforts to ensure the accuracy of these tables, they cannot substitute for careful reading of the relevant rules, the language of which is controlling.

**Table 1: DISPOSITION OF ADVICE LETTERS**

In general, the reviewing Industry Division, by letter, will approve or reject an advice letter (AL) submitted in Tier 1 or 2 (or Water's Ministerial Tier); the Commission, by resolution, will approve or reject AL submitted in Tier 3 (or Water's Discretionary Tier). Exceptions will occur, however, due to utility error or issues arising during review. The following table shows how exceptions will be handled.

**1. Utility Designates Wrong Tier**

<u>Designated Tier</u>	<u>Proper Tier</u>	<u>Staff Action</u>
1	2 or 3	Reject w/o prejudice
2	3 <sup>a</sup>	Reject w/o prejudice
3	1 or 2	Approve/reject under Tier 2 <sup>b</sup>
any	none <sup>c</sup>	Reject w/o prejudice

**2. Utility Designates Correct Tier But . . .**

- Any tier: AL is clearly erroneous Reject
- Any tier: matter in AL requires hearing Reject w/o prejudice
- Any tier: issue requires exercise of discretion Prepare resolution

**3. Remedial Action by Utility if AL is Rejected w/o Prejudice**

- Wrong Tier: Utility may submit new AL in proper tier  
Utility must stop implementation (Tier 1)
- Hearing Required: Utility may file formal proceeding
- Matter Inappropriate for AL: Utility may file formal proceeding

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<sup>a</sup> Note that a utility may designate for Tier 2 an advice letter that would qualify for Tier 1. The Tier 2 designation therefore is not "wrong" in this situation.

<sup>b</sup> However, by the utility's wrongly designating Tier 3, the advice letter may not be deemed approved.

<sup>c</sup> This situation arises where the subject matter of the advice letter requires a formal proceeding (typically, an application or petition for modification).

**Table 2: EFFECTIVE DATE OF ADVICE LETTERS**

Normally, under GO 96-B, Water advice letters will become effective upon approval, while Energy and Telecommunications advice letters will become effective either upon approval (Tiers 2 and 3) or on the date when the utility submits its advice letter to the reviewing staff (Tier 1). Other effective dates are sometimes possible, where statute, other Commission order, or the utility itself designates another effective date. This table summarizes the major possibilities, which are detailed in General Rules 7.3 to 7.3.5. Regarding the process by which disposition of advice letters occurs, see General Rules 7.6.1, 7.6.2.

	<u>Tier 1<sup>a</sup></u>	<u>Tier 2<sup>b</sup></u>	<u>Tier 3<sup>c</sup></u>
“normal” effective date:	on date submitted	upon approval (may be deemed approved)	upon resolution approval (no deemed approval)
“early” effective date:	• per statute, CPUC order	• per statute, CPUC order	• per statute, CPUC order
“later” effective date:	<ul style="list-style-type: none"> <li>• if requested by utility <u>and</u> not inconsistent w/ statute, CPUC order</li> <li>• per statute, CPUC order</li> </ul>	<ul style="list-style-type: none"> <li>• if requested by utility <u>and</u> not inconsistent w/ statute, CPUC order</li> <li>• per statute, CPUC order</li> </ul>	<ul style="list-style-type: none"> <li>• if requested by utility <u>and</u> not inconsistent w/ statute, CPUC order</li> <li>• per statute, CPUC order</li> </ul>

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<sup>a</sup> Under Energy and Telecommunications Industry Rules only.

<sup>b</sup> “Ministerial Tier” under Water Industry Rules.

<sup>c</sup> “Discretionary Tier” under Water Industry Rules.

## **5. Changes to the General Rules**

In addition to solidifying the details of internal administration for GO 96-B, we have developed several important refinements to the General Rules and the respective Industry Rules, as they were set forth in the order instituting this rulemaking. Sections 5.1 to 5.11 describe the principal additions and modifications to the General Rules.

### **5.1 Advice Letter Request to Modify a Resolution**

We have changed General Rules 5.1, 5.2, and 7.2, as originally proposed, to clarify the provisions we made for advice letter requests to modify a Commission order. We need to distinguish those Commission orders that are subject to modification through an advice letter from those that are not. If the order in question was issued in a formal proceeding, then the request must also be made formally (typically, through a petition for modification or a new application). If, however, the order was a resolution disposing of a prior advice letter, we believe the resolution in general should be subject to modification through the same informal procedure, so long as proper notice is given.<sup>19</sup> Thus, to make this distinction explicit, we clarify our General Rules on (1) matters appropriate to advice letters and matters appropriate to formal proceedings; and (2) requirements for serving advice letters.

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<sup>19</sup> Conceivably, a request to modify a resolution may raise issues whose disposition would require a formal proceeding. For example, a simple update to an existing utility program is more likely to be suitable for an advice letter than is a broad change to that program. The scope of requested relief is always key in determining the propriety of presenting a utility request by means of an advice letter.

## **5.2 Advice Letter Cover Sheet and Contents**

The Industry Divisions all require that an advice letter have a cover sheet and specific contents. We conclude that these subjects deserve inclusion in the General Rules. Thus, we propose today to add General Rule 5.5, requiring a utility to submit and serve a cover sheet with its advice letter, and General Rule 5.6, setting forth broadly applicable content requirements.

The cover sheet will concisely summarize all critical information about a given advice letter, such as the designated tier, the affected product or service, the magnitude of any rate change, the legal authority on which the utility relies, referral to other pending advice letters that might affect the same tariffs, and information for contacting the utility. The cover sheet should be helpful to everyone concerned with advice letter procedure. The utility can use the cover sheet as a check list to help ensure that a given advice letter is complete and logically assembled. The Industry Division and other reviewers can use the cover sheet to identify issues, assign personnel, and set internal schedules and priorities. In essence, the cover sheet is the road map for a given advice letter, analogous to the “scoping memo” that we use in formal proceedings. Neither the cover sheet nor any of the information contained in the cover sheet may be treated as confidential under General Rule 9. (See also Section 5.9.)

Similarly, the content requirements eliminate guesswork for the utility preparing an advice letter, help ensure that the advice letter is complete and easy to review, and limit the need for information requests after the advice letter is submitted. Both the cover sheet and the content requirements are calculated to enable effective review of advice letters within the tight timeframes available.

## **5.3 Advice Letter Supplements**

We propose in General Rule 7.5.1 to allow a utility to modify its advice letter or accompanying tariff by submitting a supplement and serving the

supplement on everyone that received the original advice letter. We also propose to abolish the alternative modification method referred to as a “slip sheet” or “substitute sheet.”

Historically, a substitute sheet was used to make corrections purported to be nonsubstantive. Because the utility was not always required to serve a substitute sheet, people affected by the tariff change did not always receive the final text of the proposed new or revised tariff before its approval. Also, substitute sheets were often identified only by an asterisk, leading to confusion even after approval.

Because the language of a tariff controls the terms and conditions of service provided under the tariff, any confusion about the text of the tariff is intolerable. Indeed, one of the main goals of this proceeding is to ensure that everyone concerned (utility, customers, and Industry Division staff) can determine quickly and without mystery the text of any given tariff as in effect at any given time. Our historic practice regarding substitute sheets is inconsistent with that goal.

In contrast, advice letter supplements are both served and identified by letter suffix. Their exclusive use to modify advice letters will enhance the review process and better track the text of proposed and approved tariffs. Since we allow both advice letters and advice letter supplements to be served electronically, eliminating substitute sheets will not impose significant additional burden on utilities. Moreover, under proposed General Rule 7.5, revisions that are truly minor will not extend the protest period or delay the effective date of the advice letter, and in those situations where comment on the revision is appropriate, the scope of such comment will be confined to the substance of the revision.

#### **5.4 Requesting Information**

How and when the reviewing Industry Division may obtain additional information from a utility about its advice letter is the subject of proposed new General Rule 7.5.2. To explain this proposal, we first discuss the role of supporting data and information gathering in the advice letter process.

The advice letter process is intentionally informal. Applications and other formal proceedings provide the forum for matters involving hearings, an evidentiary record, and disputed material facts. Advice letters, in contrast, should rarely involve extensive data gathering.<sup>20</sup> Also, a utility should ensure that its advice letter includes all necessary supporting data when submitting the advice letter; otherwise, staff cannot be expected to complete review of the advice letter within the tight timeframes available.

On occasion, on the basis of staff's own review or of a protest, staff may find that narrowly defined additional information is needed for disposition of an advice letter. In that situation, staff should simply request the information from the utility rather than disapprove the advice letter.

New General Rule 7.5.2 will apply the policies outlined above. Instead of prescribing a detailed discovery process, we allow staff and the utility to work out particular arrangements for production of information. If a material fact remains in dispute after reasonable efforts to resolve it, General Rule 5.4

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<sup>20</sup> If disposing of a matter requires extensive additional data to be generated, analyzed, and/or debated, the matter normally should be submitted as a formal proceeding rather than as an advice letter. However, the need for such additional data sometimes is not apparent until staff has reviewed the advice letter and any protests.



provides two options: Either the utility can withdraw the advice letter,<sup>21</sup> or the reviewing Industry Division can reject it without prejudice to its refiling as a formal proceeding. If staff believes determination of all material facts can be made on the basis of information provided by the utility, staff will prepare a disposition pursuant to General Rule 7.6.1 or 7.6.2, as appropriate.

### **5.5 Sanctions**

In our original rulemaking proposal, General Rule 7.5.3 (“Advice Letters Effective Pending Disposition”) contained provisions for a penalty of \$500 per day if a utility that submitted an advice letter effective pending disposition failed to correct or revise the advice letter after being notified by the reviewing Industry Division of a defect in the advice letter. After reviewing the comments, we have decided to modify this General Rule. The essential message we want to convey is that the utility conduct the General Rule describes is sanctionable by the Commission. Whether and what sanctions are imposed will depend on the facts of the particular case. The specificity in our original proposal has caused commenters to assume that the specified sanction will always be imposed, and that only this sanction will be imposed. Neither assumption is correct, and we have modified the sanction provision to make it more general and to better convey our essential message.

### **5.6 Advice Letters Deemed Approved; Effective Date**

In our original rulemaking proposal, we said in General Rule 7.6.1 that the reviewing Industry Division did not need to make a written disposition

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<sup>21</sup> Such withdrawal is without prejudice to refiling as a formal proceeding. However, an advice letter that is effective pending disposition may not be withdrawn on or after the effective date. See General Rule 5.4.

in granting an unprotested advice letter—the disposition would simply be reported at the Commission’s Internet site. In essence, this provision allowed an advice letter to be deemed approved in these circumstances. To make the provision explicit, and to clarify the timing of approval, we now propose to add a new paragraph to General Rule 7.6.1. We have also greatly expanded General Rule 7.3 from our original proposal. In this rule, we intend to cover all the permutations of how and when an advice letter may become effective.

### **5.7 Information About Tariffed Services**

In our original rulemaking proposal, General Rule 8.2 (“Serving Under Tariffs”) said that utilities must serve their California customers only pursuant to tariff terms and conditions,<sup>22</sup> and that ambiguities in a tariff would be construed against the utility. Both statements are boilerplate of public utility law, and are still sound. However, we propose to add provisions to General Rule 8.2 to better address contemporary conditions in the utility industries.

First, we will require utility representations, for example in ads regarding a tariffed service, to be consistent with the terms and conditions of the applicable tariff(s). Most consumers rely on the utility’s service representative or advertising for information about service choices, and we suspect that few consumers, now or historically, read the underlying tariffs before arranging for service. Thus, consumer protection requires ensuring that utilities accurately describe their tariffed services in all their representations to the public. The utility must bear the duty of ensuring such accuracy, which naturally

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<sup>22</sup> General Rule 8.2 also recognizes that deviations from tariffs might be approved in particular circumstances, and that statute or Commission order might authorize general exceptions to the tariff requirement for particular types of services or utilities.

complements the utility's long-standing duty to ensure that the tariffs themselves are clear and unambiguous.

Second, we will require a utility's tariffs to identify optional features as such, to disclose alternative means (such as different rate plans) of obtaining a particular service, and in both cases to specify the means by which the customer chooses.<sup>23</sup> Choices are good from the customer's perspective (in that they enable a better fit between the customer's needs and the services selected to meet those needs), but they complicate tariff drafting, as compared to traditional, "one-size-fits-all" service. For example, several different tariffs may have to be cross-referenced, depending on the range of choices the customer is offered. Our proposed requirement is intended to help ensure that tariffs fully and readily disclose information a customer would need in deciding between service options.

Some commenters have proposed standards for clarity of tariffs. We endorse the goal of writing tariffs that are understandable to consumers, but we think there are many problems in adopting a specific standard. Is the utility to assume an "average" consumer? Does such an assumption make sense in connection with a tariff for a technically complex business or industrial service? Is the utility required to render a complex legal requirement into language understandable to, say, an eighth grade reader? If a utility wants to write its new tariffs in plainer English, what should the utility do about its hundreds of pages of existing tariffs, which cannot be revised overnight? These are hard questions that go beyond the scope of this rulemaking. For present purposes, we affirm

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<sup>23</sup> GO 96-A already has similar requirements, but they are obscurely located in a list of mandatory "tariff rules." We retain this list (see General Rule 8.5.7), while recodifying and clarifying these particular requirements.

our historical approach to tariff content. That approach, as reflected in proposed General Rule 8.2, is to require that the utility provide comprehensive tariffs and bear the risk of any tariff ambiguity.

### **5.8 Publishing Tariffs**

As discussed earlier, we have decided to make Internet publication of tariffs a requirement for utilities whose gross intrastate revenues exceed \$10 million. At the same time, for any utility so publishing its tariffs, we are relaxing the requirement to maintain tariffs for public inspection at utility offices. For all utilities, a caller may obtain tariff information or order copies by telephone. (See General Rules 8.1 to 8.1.3.) Finally, we have added a statement explaining our purpose in requiring utilities to compile and publish the tariffs under which they serve their California customers. (See General Rule 8.1.1.)

The premise for all of these requirements is that public access to tariffs is vital as long as utility service continues to depend, generally or to any significant extent, on filed tariffs. Meaningful public access requires that an interested person be able to determine (1) the tariffs in effect, the tariffs that would be affected by pending advice letters, and the tariffs that are no longer in effect, and (2) the tariffs that govern (or formerly governed) the provision of a particular product or service at a particular time. We have crafted General Rules 8.1 to 8.1.3 with these public access goals in mind.

### **5.9 Confidential Material in Advice Letters**

In our original rulemaking proposal, we provided in General Rule 9 for treatment of material asserted to be confidential. The rule said, in part, that an advice letter could not be effective pending disposition if the utility submitting the advice letter requested it to be treated as confidential in whole or part. We continue to be very concerned, for reasons discussed in Section 3.1, that advice letters effective pending disposition receive due scrutiny. However, after

reviewing comments on General Rule 9, we believe our original proposal can be liberalized. Today we propose that a utility may request confidential treatment for parts of an advice letter effective pending disposition, but only if the utility concurrently provides access to the entire advice letter to those persons on the utility's advice letter service list who have executed a reasonable nondisclosure agreement for purposes of advice letter review.<sup>24</sup>

### **5.10 Numbering Tariff Sheets**

In lieu of individually negotiated contracts, a utility's tariffs systematically describe its services, products, and relationships with its customers. Any interested person, including a current, former, or potential customer, should be able to determine the applicable tariffs currently in effect, or in effect as of a particular date, for a particular utility. A logical system of tariff sheet numbering is helpful in making such determinations; however, the existing GO 96-A numbering system is incomplete. We propose several improvements to better accommodate revising existing sheets, inserting additional sheets, and keeping track of these changes.<sup>25</sup>

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<sup>24</sup> Of course, confidential treatment may be requested only for information for which such treatment is authorized by statute or Commission order. General Rule 9 does not broaden the types of information that may be kept confidential. Also, neither the cover sheet of an advice letter nor any of the information in the cover sheet may be kept confidential.

<sup>25</sup> Our improvements are based on the tariff numbering system adopted by the Federal Communications Commission (FCC) (see generally Title 47, Chapter 61 of the Code of Federal Regulations). By Resolution U-275 (March 25, 1947), we authorized telecommunications utilities to follow the FCC system in their California tariffs.

The crux of the numbering system was, and will continue to be, consecutive numbering, starting with tariff sheet 1.<sup>26</sup> When a utility starts operations, consecutive numbering presents few difficulties, but this pristine condition does not last long. For example, the utility may need to revise the content of a particular sheet. Under GO 96-A, the utility may replace Original Sheet 5 with a differently numbered Revised Sheet; we propose, instead, that an Original Sheet 5 be replaced by a Revised Sheet bearing the same number, so that Original Sheet 5 is replaced by 1<sup>st</sup> Revised Sheet 5, and then by 2<sup>nd</sup> Revised Sheet 5, and so on.

Another confusion arises when a utility needs to add new sheets, especially when these new sheets relate to an existing service. GO 96-A does not clearly say how the utility is to insert and number new sheets when they should go between its current tariff sheets, so that all the sheets setting forth a given product or service are kept together in logical order. We propose that the utility maintain subject matter cohesion by inserting new sheets, using a decimal numbering system where appropriate. For example, the utility will insert Sheets 5.1, 5.2, and so on, following Sheet 5; and if need arises, Sheets 5.1.1, 5.1.2, and so on will be inserted following Sheet 5.1.<sup>27</sup>

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<sup>26</sup> The FCC allows a utility, as an alternative, to number its tariff sheets to reflect the section number of the tariff as well as the page. For example, under the alternative, sheets in Section 1 would be numbered 1-1, 1-2, and so on. Provided that the utility uses only one page numbering system throughout its tariffs, this alternative is acceptable to us.

<sup>27</sup> In this situation, the FCC allows an “alpha” suffix (for example, 5A, 5B, and so on) in lieu of the decimal system. Again, provided the utility is consistent throughout its tariffs, use of the “alpha” suffix is acceptable to us.

GO 96-A requires only a Table of Contents covering all of a utility's tariffs; for many utilities, whose tariffs may run to several shelf feet, such a table is unwieldy. We propose, in addition, that a utility include a "check sheet" with each of the utility's tariff schedules, and each of its bound volumes. The check sheet would list all the effective tariff sheets, by page and revision number, for that schedule or bound volume.

All utilities starting operations after the effective date of GO 96-B must number their tariff sheets consistent with the improved system described above. Telecommunications utilities that file tariffs in compliance with the FCC system are already in compliance with the GO 96-B tariff sheet numbering system. For utilities not in compliance with that system as of the effective date of GO 96-B, we will delegate authority to the Industry Divisions to require renumbering in accordance with schedules that the respective divisions may adopt. Finally, the Industry Divisions may excuse compliance by small utilities and by a utility (such as oil pipelines) that must file tariffs in accordance with a federal tariff sheet numbering system that is incompatible with our system.

### **5.11 Miscellaneous Changes**

In addition to the major changes discussed above, we have clarified or modified many General Rules in response to comments or upon our own further reflection. All proposed changes to the General Rules are shown in Appendix A, with new language underlined and deleted language struck through.

Among the additional changes, the following are notable. We have clarified our use of "public utility," the interrelationship between General and Industry Rules, and the applicability of GO 96-B. (General Rule 1.1.) We have also clarified the distinction between "formal" and "informal" matters (General Rules 3.7, 5.1), and clarified the definition of "person" to include both natural persons and legal entities. (General Rule 3.10.) We have revised several General

Rules by replacing “advice letter filer” with “utility.” We have completely rewritten General Rule 7.5 to reflect the process of advice letter review as described in Sections 3-4.7 of today’s decision. In General Rule 8.2.3, we essentially carry over the provisions in GO 96-A for deviation from tariffs in case of emergency or to serve government agencies; however, we liberalize the provisions applicable to telecommunications utilities so that, during emergencies, they may provide free or reduced rate service to the public, and not just to government agencies. We have revised General Rule 8.5.4 to better describe the utility’s responsibility for delineating the boundaries of its service area through maps and verbal descriptions. Finally, we have deleted our proposal for a “Customer Request for Deviation” (General Rule 10 in the original rulemaking proposal); instead, consistent with current practice, the Industry Divisions may assist informally when a customer believes a utility is unreasonably rejecting the customer’s request for a deviation.

## **6. Changes to Energy Industry Rules**

The Energy Industry Rules are drastically shortened, compared to the version set forth in the order instituting this rulemaking. Even at that time, there were many areas where the Energy Industry Rules overlapped the General Rules. With the clarification and expanded coverage of the General Rules proposed in today’s order, we saw that all of the Industry Rules needed severe pruning. The Energy Industry Rules set forth in Appendix B are less than half the length of the prior version, and we have also revised their format and structure to fit better with both the General Rules and the other Industry Rules.

The tier structure of the Energy Industry Rules has been simplified. Conceptually, Tiers 1, 2, and 3 for energy and telecommunications are now identical. Advice letters for oil pipeline rate changes will be handled under Tier 1 because these advice letters may be effective pending disposition, but an



additional Energy Industry Rule is proposed to implement other aspects of the statutorily-mandated procedures for these changes.

The prior version of the Energy Industry Rules did not specifically address advice letters proposing new products or services. In their comments, several energy utilities jointly suggested that “Pilot Programs for Discretionary Products and Services” could be initiated simply by submission of notice to the Commission through an information-only filing (General Rule 6). We reject the suggestion. Our recent experience shows that proposed new products or services commonly raise controversial and difficult issues. An information-only filing is completely unsuitable for dealing with such issues, since by definition (General Rule 3.9) an information-only filing is only a report; it is not subject to protest, and does not receive a disposition. Even a pilot program should not go forward on such a thin basis. For new energy products and services to be offered under tariff, we find that under current conditions only Tier 3 provides an appropriate level of regulatory scrutiny. Thus, an advice letter proposing a new tariffed energy offering must be submitted for review under Tier 3, and may not be approved or become effective except by Commission adoption of a resolution approving the advice letter.<sup>28</sup>

As expressly authorized in some of the General Rules, the Industry Rules may set other or additional requirements regarding certain subjects addressed in those General Rules. Energy Industry Rules 6 to 6.4 have tariff requirements that go beyond the General Rule provisions on Internet publication, description of

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<sup>28</sup> We note that our Affiliate Transaction Rules already govern the offering of new nontariffed products or services. (See D.98-08-035, Appendix A, Rule VII.) We intend to review, and possibly revise, these rules shortly, but pending that review they will continue to govern the energy utilities’ nontariffed offerings.

service area, and tariff contents. The first two of these requirements are additions to the Energy Industry Rules as initially proposed.

Regarding Internet publication, Energy Industry Rule 6.1 requires the utility to publish both the text and the current status of all tariff sheets, beginning with the date when the utility had to comply with the Internet publication requirement. Essentially, under this rule, the utility's Internet site will contain a comprehensive, searchable tariff file that will include the tariff sheet corresponding to every used tariff sheet number, starting with all of the tariff sheets in effect or pending review as of the date the utility had to begin Internet publication. The published tariffs will enable any person to easily research the evolution of a particular tariff provision through successive revisions, and will resolve questions about the status of a particular tariff sheet since the published tariffs will indicate whether the sheet is in effect, pending, withdrawn, rejected, or no longer in effect (i.e., canceled).

Regarding description of service area, Energy Industry Rule 6.2 requires that the utility include, among other descriptors, the zip codes wholly or partially within its service area. In the Energy Division's experience, this zip code information has been very useful to staff and others, and should be required of all energy utilities.

## **7. Changes to Telecommunications Industry Rules**

As with all of the Industry Rules, the Telecommunications Industry Rules have been revised to better fit with the General Rules. The new version of the Telecommunications Industry Rules is shorter; the format and structure more closely follow those of the General Rules and the other Industry Rules; and provisions that unnecessarily duplicated or overlapped provisions of the General Rules were eliminated.

The main substantive changes to the Telecommunications Industry Rules concern allocation of subject matter to different tiers. For example, for advice letters proposing new services, we had distinguished initially between such proposals, depending on the type of carrier making the proposal: A local carrier operating under our “New Regulatory Framework” (i.e., a “NRF-LEC”) would submit a Tier 2 advice letter (effective after staff approval), but a local carrier competing with the NRF-LEC could submit a Tier 1 advice letter (effective pending disposition). We have reconsidered this distinction; under the new version of the Telecommunications Industry Rules, all such proposals would be reviewed under Tier 2. The new version is more fair, and ensures that proposed new services receive regulatory scrutiny before they become effective. At the same time, GO 96-B review of advice letters proposing new services would be streamlined relative to such review under GO 96-A, since the initial review period is shorter (30 days instead of 40), and if no controversy arises the advice letter thereafter may be deemed approved.

Similarly, the new version would shift from Tier 1 to Tier 2 the review of certain advice letters that propose to withdraw a service,<sup>29</sup> or to realign a boundary or exchange area if the realignment results in increased rates or more restrictive terms or conditions. The shift ensures regulatory scrutiny of actions that could limit service or increase costs to customers. Among other things, staff can determine whether affected customers have been notified and, if not, can require appropriate corrective action by the utility.

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<sup>29</sup> Note that Industry Division disposition is permitted only if the service proposed to be withdrawn is one for which affected customers would still have an alternative service provider. Where no such alternative exists, approval for withdrawal requires a formal application.

The new version also streamlines the procedure for submitting contracts for tariffed services. Under the procedure, all such contracts (except for contracts entered into by a “GRC-LEC,” i.e., a local exchange company still operating subject to general rate case ratesetting and regulatory oversight) may be effective when signed, or as otherwise provided in the contract. GO 96-A contained such a procedure but limited it to government contracts.

There are several other notable substantive changes. In the order instituting this rulemaking, we had proposed to require a NRF-LEC to submit a formal application to update its authorized price cap, or to change the price floor or ceiling, or other term or condition, of a Category II service. For price floor increases and ceiling decreases, this procedure would have been more restrictive than current procedure, under which these changes could be made by advice letter. On further consideration, we now propose to allow a NRF-LEC to seek to change the price floor or ceiling, or other term or condition, of a Category II service by means of a Tier 3 advice letter. We have also revised our proposal regarding customer notice. We had previously proposed that such notice of an increased rate or charge, or of a more restrictive term or condition, be provided either 15 or 30 days (depending on the service) before the increase or other change would become effective. We now propose to require customer notice at least 25 days before the effectiveness of any such change.

The new version of the Telecommunications Industry Rules also dispenses with the characterization of carriers as “dominant” or “non-dominant,” and instead refers directly to carriers by class (e.g., local exchange carrier, interexchange carrier, and so on). Several additional terms are defined, and procedures for specific types of advice letters (for example, asset transfers) are provided.

## **8. Changes to Water Industry Rules**

The changes to the Water Industry Rules, compared to the version set forth in the order instituting this rulemaking, are relatively minor. Most of the changes are intended to make these rules easier to use and understand. For example, the terminology and structure of the Water Industry Rules now track the General Rules more closely, and we have added many more cross-references to the General Rules, as well as to the Commission's Rules of Practice and Procedure and to relevant sections of the Public Utilities Code. Also, new or modified sample forms are provided to illustrate the elements common to most types of advice letters.

Substantively, the new version of the Water Industry Rules clarifies the use of advice letters in two common situations, namely, service extensions into "contiguous" areas, and amortization of under- or over-collections in balancing accounts. Notable among the latter clarifications is that, in making refunds from an over-collected account, a utility will apply a surcredit only to the service charge, thus enabling greater precision in refund calculations and avoiding the disincentive to conserve water that occurs when a surcredit applies to usage.

Other important substantive changes include the following. The Customer Notice provisions are clarified, and large (Class A) water utilities are required to publish pending advice letters on their Internet sites. The allocation of advice letters between Water Division's two review tiers (ministerial and discretionary) has a few changes and additions. Lastly, procedures for specified types of advice letters are added or clarified.

## **9. Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) was mailed to the parties on \_\_\_\_\_, 2001. An extended period for public review and comment was provided, with concurrent opening comments due on \_\_\_\_\_,

and concurrent reply comments due on \_\_\_\_\_. Discussion of the comments follows.

### **Findings of Fact**

1. GO 96-B comprehensively governs utility tariffs and advice letters.
2. To implement GO 96-B, a transition period is appropriate.
3. The number of advice letters pending during the transition period should be minimized.
4. A special approval process during the transition period is appropriate.
5. The Commission's rules for public review and comment regarding draft resolutions complement the GO 96-B advice letter procedures.
6. Large utilities should be required to provide Internet access to their tariffs.
7. Historic advice letter practice, as set forth in GO 96-A, has become inadequate in relation to the volume and variety of advice letters submitted for Commission review in recent years.
8. Advice letters should be separated into two broad groups: advice letters disposed of by staff, where approval or rejection is ministerial; and advice letters disposed of by Commission resolution, where approval or rejection requires the exercise of discretion.
9. Only an advice letter that the utility has properly submitted for staff disposition (for water, the "Ministerial Tier;" for energy and telecommunications, Tier 1 or Tier 2) may be deemed approved.
10. The tier under which a utility submits an advice letter does not irrevocably dictate the mode of disposition of that advice letter.
11. Whenever disposition of an advice letter would be a ministerial act, staff has delegated authority under GO 96-B to make that disposition.
12. Allowing certain advice letters to be implemented at some time before their approval will both help the Commission and the stakeholders to focus their

resources on more controversial matters and better accommodate innovation and competition in the marketplace.

13. A necessary condition to allowing any advice letter to go into effect before it has received approval is that the utility must be prepared to undo any actions the utility has taken to implement the advice letter if the advice letter ultimately is not approved.

14. Drafting, placing on the Commission's agenda, and voting on a resolution within the 30-day initial review period contemplated by Pub. Util. Code § 455 is generally not possible.

15. An extension of the Tier 1 review period does not cancel the effectiveness of the advice letter.

16. A 60-day rather than a 30-day initial review period for Tier 1 advice letters is appropriate.

17. A Tier 2 advice letter is not in effect during the initial review period, and its effectiveness is suspended throughout any subsequent review period, consistent with Pub. Util. Code § 455 and with the fundamental premise of Tier 2 (and Tier 3) advice letters that approval of these advice letters must occur before any proposed change becomes effective.

18. The suspension of Tier 3 advice letters under GO 96-B is automatic if (as generally will be the case) disposition does not occur by the end of the initial review period.

19. Unprotested advice letters in Tiers 1 or 2 may be deemed approved without a written disposition. In all other instances, there will be a written disposition.

20. All advice letter dispositions will be reported in tabular form at the Commission's Internet site.

21. In general, a Commission resolution disposing of a prior advice letter should be subject to modification through the same informal procedure, so long as proper notice is given.

22. It is appropriate to require a cover sheet, which would concisely summarize all critical information about a given advice letter.

23. The text of any given tariff as in effect at any given time must be readily determined.

24. The exclusive use of advice letter supplements to modify advice letters will enhance the review process and better track the text of proposed and approved tariffs.

25. A utility should ensure that its advice letter includes all necessary supporting data when submitting the advice letter.

26. Public access to tariffs is vital as long as utility service continues to depend, generally or to any significant extent, on filed tariffs.

27. Any interested person should be able to determine the applicable tariffs currently in effect, or in effect as of a particular date, for a particular utility. A logical system of tariff sheet numbering is helpful in making such determinations.

28. For new energy products and services to be offered under tariff, only Tier 3 provides an appropriate level of regulatory scrutiny.

29. All telecommunications advice letters proposing new services should be reviewed under Tier 2, which will ensure fairness and appropriate regulatory scrutiny before they become effective.

30. The various Industry Rules are modified, compared to the versions originally proposed, to better conform to the provisions, structure, and terminology of the General Rules, and to make appropriate cross-references to the General Rules, other Commission rules and orders, and statutory provisions.



Where appropriate, the allocation of advice letter subject matter by tier is adjusted, and procedures for specific types of advice letters are added.

### **Conclusions of Law**

1. If an advice letter is clearly erroneous, Industry Division staff should reject the advice letter.

2. The Commission may lawfully delegate ministerial determinations to its staff.

3. If the reviewing Industry Division determines that the utility's Tier 1 or 2 designation of an advice letter was improper under the applicable Industry Rules, staff will reject the advice letter without prejudice. If designated Tier1, the advice letter's effectiveness will cease, and the Commission will further direct the utility regarding any other remedial actions.

4. Pub. Util. Code § 455 governs tariff changes "not increasing or resulting in an increase in any rate." Rate changes generally are governed by Pub. Util. Code § 454.

5. Since Tier 1 advice letters may become effective pending disposition, Pub. Util. Code § 455 does not constrain the Commission to complete its review within 30 days.

6. Utility representations, for example in ads regarding a tariffed service, must be consistent with the terms and conditions of the applicable tariff(s).

7. A utility's tariffs must identify optional features as such, must disclose alternative means (such as different rate plans) of obtaining a particular service, and in both cases must specify the means by which the customer chooses.

8. Regarding tariff content, the utility must provide comprehensive tariffs and bear the risk of any tariff ambiguity.

9. To rapidly accomplish the reform of the Commission's advice letter procedures and tariff requirements, today's order should be made effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. General Order (GO) 96-B is adopted, effective July 1, 2001, and shall govern the review and disposition of advice letters submitted on or after its effective date.

2. GO 96-A shall continue to govern the review and disposition of any advice letter filed on or before June 30, 2001. Any such advice letter that was filed on or before May 21, 2001, that is unprotested (i. e., no timely protest was submitted), and that is still pending as of July 1, 2001, shall be automatically approved as of that date, unless, on or before that date, the reviewing Industry Division either has (1) placed on the Commission's agenda a draft resolution disposing of the advice letter, or (2) made a data request or otherwise given written notice to the utility that its advice letter is undergoing active review.

3. Rulemaking 98-07-038 is closed.

This order is effective today.

Dated March \_\_\_\_\_, 2001, at San Francisco, California.

**See Acrobat Version  
For Draft Decision, and Appendices A--E**